



United States
Department of
Agriculture

CERTIFIED RECEIPT REQUESTED

Office of
Administrative
Law Judges

August 6, 2010

Hearing Clerk

Room 1031
South Building

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Avenue SW

Washington, DC
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Ellis W. Peetluk, Esq.
13820 Old St. Augustine Road
Suite 113-284
Jacksonville, Florida 32258

Dear Sir / Madam:

Subject: **In re: Vanishing Species Wildlife, a Florida not-for-profit corporation; and Barbara Hartman-Harrod and Jeffrey Harrod, individuals, Respondents - AWA Docket No. 10-0194**

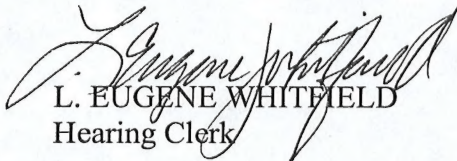
Enclosed is a copy of the Decision and Order issued in this proceeding by Chief Administrative Law Judge Peter D. Davenport on August 5, 2010.

Each party has **thirty (30) days** from the service of this decision and order in which to file an appeal to the Department's Judicial Officer.

If no appeal is filed, the Decision and Order shall become binding and effective as to each party **thirty-five (35) days** after its service. However, no decision or order is final for purposes of judicial review except a final order issued by the Secretary or the Judicial Officer pursuant to an appeal.

In the event you elect to file an appeal, an original and three (3) copies are required. You are also instructed to consult § 1.145 of the Uniform Rules of Practice (7 C.F.R. § 1.145) for the procedure for filing an appeal.

Sincerely,


L. EUGENE WHITEFIELD
Hearing Clerk

Enclosure(s)

Sent to: Babak A. Rastgoufard, OGC
Ruth Ann McDermott, APHIS

caa: 8/6/2010

USDA
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2010 AUG -5 PM 3: 54

UNITED STATES DEPARTMENT OF AGRICULTURE

RECEIVED

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 10-0194

In re: VANISHING SPECIES WILDLIFE, INC.,
a Florida not-for-profit corporation;
BARBARA HARTMAN-HARROD; and
JEFFREY HARROD, individuals,

Respondents

DECISION AND ORDER

This action was brought by the Administrator of the Animal and Plant Health Inspection Service by the filing on March 30, 2010 of an Order to Show Cause why Animal Welfare License 58-C-0660 Should Not Be Terminated based upon the alleged failure of the Respondents to comply with the terms and conditions of a Consent Decision entered in AWA Docket No. 08-0136 on February 5, 2009. The Respondents filed an Answer on May 19, 2010, admitting in part certain of the allegations of the Order to Show Cause, but seeking to excuse full compliance on the grounds that the Respondents had made continual good faith efforts to find humane placement for the big cats still in their possession, but had not been able to do so due to the age and health condition of the cats.

On June 23, 2010, the Administrator filed a Motion for Summary Judgment based upon the pleadings and the evidence tendered with the Motion, asking for termination of the Animal Welfare license held by the corporate Respondent and disqualifying the Respondents from obtaining an Animal Welfare license for a period of no less than two

years. The Respondents have responded, suggesting that there are genuine issues of fact in dispute, including whether the Respondents were in substantial compliance with the terms of the Consent Decision; whether any failure was willful; and whether any technical failures nevertheless demonstrated good faith on the parts of the Respondents.

The Respondents deny that their failure to permanently reduce the number of Animal Welfare Act regulated animalsby selling, donating, or otherwise placing any juvenile and adult big cats....was willful, but rather was based upon humane considerations and the difficulty of placing cats with the age and health needs that the remaining animals have.

As I will find that the Answer of the Respondents does admit noncompliance as to the requirement to permanently reduce the number of big cats and that willfulness need not be shown in order to enforce the terms and provisions of a Consent Decision, I will find there are no issues of genuine fact at issue and will grant the Motion for Summary Judgment.

Discussion

The Animal Welfare Act (the Act or AWA) provides that the Secretary shall issue licenses to dealers and exhibitors upon application in such form and manner as the Secretary may prescribe (7 U.S.C. §2133). The power to require and to issue licenses under the Act includes the power to terminate a license and to disqualify a person from being licensed. *In re: Animals of Montana*, 68 Agric. Dec. ____ (2009); *In re: Amarillo Wildlife Refuge, Inc.* 68 Agric. Dec. ____ (2009); *In re: Loreon Vigne*, 67 Agric. Dec. ____ (2008); *In re: Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

The Judicial Officer, speaking for the Secretary, has repeatedly held motions for summary judgment appropriate in cases involving the termination and denial of Animal Welfare Act licenses. *In re: Amarillo Wildlife Refuge, Inc., supra; In re Loreon Vigne, supra, In re: Mark Levinson*, 65 Agric. Dec. 1026, 1028 (2006). The Judicial Officer has also held that hearings are unnecessary and futile when there is no factual dispute of substance. *In re: Animals of Montana*, 68 Agric. Dec. ____ (2009), 2009 WL 624354 at *7 citing *Veg-Mix, Inc. v. United States Dep't of Agric.*, 832 F. 2d 601, 607 (D.C. Cir. 1987).

It is clear, as was suggested in the Administrator's Motion for Summary Judgment, that from the number of Consent Decisions entered in any given year that settlements constitute an important role in deciding matters before the Secretary as such settlements benefit both the Department and the respondents who generally received a reduced sanction. *See, In re James Blackwell, et al.* 50 Agric. Dec. 465, 472 (1991). Accordingly, settlement agreements in administrative proceedings should be enforced in the absence of extraordinary circumstances. *In re: Far West Meats and Michael A. Serrato*, 55 Agric. Dec. 1033, 1041 (1996); *In re: Two Countries City Dressed Abattoir Packing Corp.*, 48 Agric. Dec. 158, 164 ((1989); *In re: Indian Slaughtering Co., Inc.*, 35 Agric. Dec. 1822, 1827 (1976).

In this action, the Administrator of the Animal and Plant Health Inspection Service (APHIS) determined that the Respondents are unfit to be licensed and that issuance of a license would be contrary to the purposes of the Act. *See*, ¶ 15, Goldentyer Declaration. In reaching this determination, Dr. Goldentyer concluded that the Respondents had ignored the terms of the Consent Decision and Order issued for the

purpose of ensuring humane treatment of animals and cited the Respondents' repeated failures to allow inspections of their facility. *Id.* Attachment 4, 6, 9, & 10.¹ While the Respondents might question the use of the verb "ignore," it is unnecessary to determine whether there is a meretricious element to the noncompliance. It remains undisputed that the Respondents have failed to comply with the terms of the Consent Decision and Order. Even were the unsuccessful attempts to inspect the Respondents' records overlooked or not considered, the record amply demonstrates that the deadline to dispose of the big cats set forth in the Consent Decision and Decree has long since expired and has been now exceeded by over a year bespeaking an unacceptable and overly cavalier approach on the Respondents' part to satisfy a condition that they freely undertook. It is also clear that the Respondents never sought an extension of the deadline prior to its expiration.

Section 2.11 of the Regulations (9 C.F.R. §2.11) authorizes denial of a license for a variety of reasons, including:

(a) A license will not be issued to any applicant who:

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that issuance of a license would be contrary to the purposes of the Act.

Section 2.12 (9 C.F.R. §2.12) provides:

A license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to §2.11 after a hearing in accordance with the applicable rules of practice.

¹ Respondents denied generally that they failed to make their records available for inspection; however, the inspection reports do not appear to be disputed.

Accordingly, based upon the record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Vanishing Species Wildlife, Inc. (VSW) is a Florida not-for-profit corporation. The corporation's mailing address as of April of 2010 is in Sunrise, Florida.
2. Barbara Hartman-Harrod is an individual who resides in Florida and is a director of VSW.
3. Jeffrey Harrod is an individual who reside in Florida and is a director of VSW.
4. Both Barbara Hartman-Harrod and Jeffrey Harrod have done business as VSW.
5. VSW, Barbara Hartman-Harrod and Jeffrey Harrod, at all times material times were operating as an exhibitor as that term is defined in the Act and Regulations, and have held Animal Welfare Act License number 58-C-0660, issued to "VANISHING SPECIES WILDLIFE, INC."
6. VSW's primary facility in which its animals are housed is located in Davie, Florida.
7. On June 5, 2008, the Administrator filed a complaint against the Respondents, alleging that they had willfully violated the Act and Regulations. *In re: Vanishing Species Wildlife, Inc., et al.* AWA Docket No. 08-0136.
8. On February 5, 2009, a Consent Decision and Order signed by the Respondents was entered.
9. The Respondents have failed to comply with the terms and conditions set forth in the Consent Decision and Order by failing to permanently reduce the number of AWA

regulated animals by selling, donating or otherwise placing any juvenile and adult big cats currently housed at their primary facility no later than July 31, 2009.

10. Animal Care inspectors sought unsuccessfully on a number of occasions to inspect Respondents' animals, facilities and records; however, the Respondents were unavailable. Attachment 4, 6, 9, & 10 to Order to Show Cause.

10. The Administrator has determined that VSW, Barbara Hartman-Harrod and Jeffrey Harrod are unfit to be licensed and that allowing them to hold a license would be contrary to the purposes of the Act.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The findings of the Administrator that VSW, Barbara Hartman-Harrod and Jeffrey Harrod are unfit to be licensed and that allowing them to hold a license would be contrary to the purposes of the Act are warranted for the failure of the Respondents to timely comply with the terms and conditions of the Consent Decision and Order entered on February 5, 2009 in *In re: Vanishing Species Wildlife, Inc., et al.*, AWA Docket No. 08-0136.

Order

1. Animal Welfare Act License number 58-C-0660, issued to "VANISHING SPECIES WILDLIFE, INC." is terminated.
2. The Respondents, and any of their agents, assigns, and any business entity for which any of them are an officer, agent or representative or otherwise holds a substantial business interest are disqualified for a period of 2 years from becoming licensed under

the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

3. This Decision and Order shall become final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to Section 1.145 of the Rules of Practice (7 C.F.R. §1.145).

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
August 5, 2010



PETER M. DAVENPORT
Chief Administrative Law Judge

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